

Application No. 09/827,432

**REMARKS/ARGUMENTS**

Claims 1-21 are pending in the present application. Claim 9 has been withdrawn from consideration, and claims 1-8 and 10-13 are rejected. Claims 14-21 are objected to as being dependent upon a rejected base claim, and the Examiner states that claims 14-21 "would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims."

In order to advance prosecution on the merits, claims 1-8 and 10-17 have been canceled, without prejudice to Applicant's right to pursue such canceled claims in a divisional application. In accordance with the recommendation of the Examiner, claims 14, 18, 19 and 20 have been amended to be in independent form and to incorporate all of the limitations of the now canceled claims from which they previously depended. New dependent claims 22-30 have been added which depend from claims 18, 19, and 20. These dependent claims replace canceled dependent claims 2-4, 6-8 and 11-13, which previously depended, respectively, from claims 1, 5 and 10 (the content of which has now been incorporated, respectively, into claims 18, 19 and 20). No new matter has been added by the above amendments.

In the recent Advisory Action, dated April 7, 2006, the Examiner maintained the rejection of claims and refused entry of the proposed amendments, explaining that the proposed amendment of claim 14 did not precisely correspond to the scope of former claim 14 incorporating all of the limitations of the base claim 10. Specifically, the Examiner states that step (a) of base claim 10 ("selecting for each data trace one or more alignment points corresponding to an internal peak associated with internal bases that are highly conserved in the target nucleic acid") defines a required alignment point corresponding to an internal peak, while the limitation of dependent claim 14 ("further comprising alignment points selected from the group consisting of a primer peak associated with unextended primer, a full-length peak associated with full length product produced during a cyclic primer extension reaction with two primers") defines a required Markush group consisting of two optional alignment points corresponding to a primer peak and a full-length peak. Applicant understands that it is the Examiner's position that claim 14, incorporating all of the limitations of claim 10, must recite a required step of selecting alignment points corresponding to an internal peak, plus a separate

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required step of selecting additional alignment points from the group of unextended primer peak and a full-length peak.

In view of the Examiner's remarks, Applicant has accordingly amended claim 14 to more precisely incorporate the elements of claim 10, from which it depended. In addition to all the other elements of claim 10 that are incorporated, claim 14 has specifically been amended to incorporate the elements of step (a) of claim 10 as follows:

selecting for each data trace one or more alignment points corresponding to an internal peak associated with internal bases that are highly conserved in the target nucleic acid, and further comprising selecting alignment points selected from the group consisting of a primer peak associated with unextended primer, a full-length peak associated with full length product produced during a cyclic primer extension reaction with two primers, and assigning to each alignment point a reference position number reflecting the relative position of the alignment point with respect to the sequence as a whole

Amended claim 14 incorporates the required step (a) of claim 10 ("selecting for each data trace one or more alignment points corresponding to an internal peak associated with internal bases that are highly conserved in the target nucleic acid"), while the elements of claim 14 ("further comprising selecting alignment points selected from the group consisting of a primer peak associated with unextended primer, a full-length peak associated with full length product produced during a cyclic primer extension reaction with two primers") are retained as a separate Markush group of only two elements. Amended claim 14 thus requires an alignment point corresponding to an internal peak and additional alignment points selected from the Markush group. Applicant respectfully submits that newly amended claim 14 now precisely reflects the scope of former claim 14 "rewritten in independent form including all of the limitations of the base claim and any intervening claims."

As previously explained, claim 18 has also been rewritten in independent form and to include the limitations of independent claim 1, from which it previously depended. Claim 19 has also been rewritten in independent form and to include the limitations of independent claim 5, from which it previously depended. Claim 20 has also been rewritten in independent form and to include the limitations of independent claim 10, from which it previously depended. New claims 22-30 have been added that are identical to former dependent claims 2-4, 6-8, and 10-12, but now depend from amended claims 18, 19 and 20.

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With respect to claims 1-8 and 10-13, which stand rejected under 35 U.S.C. §102, as being anticipated by *Allex et al.* (1997), Applicant has canceled independent claims 1-8 and 10-13, thereby obviating the rejection with respect to these claims. In view of the cancellation of claims 1-8 and 10-13, Applicant requests that this rejection be withdrawn and the claims allowed.

In summary, claims 1-8 and 10-13 have been canceled, and 14-21 have been properly "rewritten in independent form including all of the limitations of the base claim and any intervening claims," in accordance with the instructions of the Examiner in the Advisory Action. In view of the above amendments, Applicant respectfully submits that all outstanding claims 14-21 and new claims 22-30 are in condition for allowance. Applicant accordingly requests that the outstanding objections and rejections be withdrawn and the claims be allowed.

Respectfully submitted,



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